



## FEDERAL COMMUNICATIONS COMMISSION

[DA 21-384; MB Docket No. 21-118; FRS 20903]

### Vandalia Media Partners 2, LLC, Application for Renewal of License of AM Radio

#### Station WJEH(AM), Gallipolis, OH

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document commences a hearing to determine whether the application filed by Vandalia Media Partners 2, LLC to renew its license for radio station WJEH(AM), Gallipolis, Ohio, should be granted. The application has been designated for hearing based on the station's extended silence and operation at reduced power since becoming the licensee on December 31, 2019.

**DATES:** Persons desiring to participate as parties in the hearing shall file a petition for leave to intervene not later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]**.

**ADDRESSES:** File documents with the Office of the Secretary, Federal Communications Commission, 45 L St. NE, Washington, DC 20554, with a copy mailed to each party to the proceeding. Each document that is filed in this proceeding must display on the front page the docket number of this hearing, "MB Docket No. 21-118."

**FOR FURTHER INFORMATION CONTACT:** Albert Shuldiner, Media Bureau, (202) 418-2721.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Hearing Designation Order (Order), MB Docket No. 21-118, DA 21-384, adopted April 1, 2021, and released April 2, 2021. The full text of the Order is available online by using the search function for MB Docket No. 21-118 on the Commission's ECFS web page at [www.fcc.gov/ecfs](https://www.fcc.gov/ecfs).

#### Summary of the Hearing Designation Order

1. The Order commences a hearing proceeding before the Commission to determine whether the application filed by Vandalia Media Partners 2, LLC (Vandalia) to renew the license for radio station WJEH(AM), Gallipolis, Ohio (WJEH Renewal Application) should be granted pursuant to section 309(k)(1) of the Communications Act of 1934 (Act), 47 U.S.C. 309(k)(1). The WJEH Renewal Application is designated for hearing based on the station's record of extended silence and operation at significantly reduced power during and following its license term.

2. A broadcast licensee's authorization to use radio spectrum in the public interest carries with it the obligation that the station serves its community, providing programming responsive to local needs and interests. Broadcast licensees also are required to operate in compliance with the Act and the Commission's rules (Rules). These requirements include the obligation to transmit potentially lifesaving national level Emergency Alert System (EAS) messages in times of emergency and to engage in periodic tests to ensure that their stations are equipped to do so.

3. The basic duty of broadcast licensees to serve their communities is reflected in the license renewal provisions of the Act. In 1996, Congress revised the Commission's license renewal process and the renewal standards for broadcast stations by adopting section 309(k) of the Act, 47 U.S.C. 309(k). Section 309(k)(1) of the Act, 47 U.S.C. 309(k)(1), provides that the Commission shall grant a license renewal application if it finds, with respect to the applying station, that during the preceding license term: (a) the station has served the public interest, convenience, and necessity; (b) there have been no serious violations by the licensee of the Act or the Rules; and (c) there have been no other violations by the licensee of the Act or the Rules which, taken together, would constitute a pattern of abuse. Section 309(k)(2) of the Act, 47 U.S.C. 309(k)(2), provides that if a station fails to meet the foregoing standard, the Commission may deny the renewal application pursuant to Section 309(k)(3), 47 U.S.C. 309(k)(3), or grant the application on appropriate terms and conditions, including a short-term renewal. Section 309(k)(3) of the Act, 47 U.S.C. 309(k)(3), provides that if the Commission determines, after

notice and opportunity for hearing, that the licensee has failed to meet the standard of section 309(k)(1), 47 U.S.C. 309(k)(1), and that no mitigating factors justify the imposition of lesser sanctions, the Commission shall issue an order denying the license renewal application for the station.

4. Section 312(g) of the Act, 47 U.S.C. 312(g), provides that if a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary, except that the Commission may extend or reinstate such station license if the holder of the station license prevails in an administrative or judicial appeal, the applicable law changes, or for any other reason to promote equity and fairness. As an attempt to avoid license expiration, stations have resumed operations for short periods of time, in some cases one or two days, or operated at significantly reduced power, before the one-year period of silence concludes. This practice raises a question of whether license renewal is in the public interest if the station has been silent for most or all of the license term or has not served the community of license consistent with the license authorization.

5. WJEH(AM) (Station) was licensed to Vandalia on December 31, 2019 as a Class D AM station serving Gallipolis, Ohio. The Station was silent from December 31, 2019 through the end of the license term. After the conclusion of the license term, the Station resumed operations at 10% of the power output authorized by its license. Due to the Station's extended silence and operation at significantly reduced power, we are unable to find that grant of the renewal application is in the public interest.

6. Section 309(k)(3) of the Act, 47 U.S.C. 309(k)(3), requires "notice and opportunity for a hearing as provided in subsection (e)." Section 309(e), 47 U.S.C. 309(e), requires a "full hearing in which the applicant and all other parties in interest shall be permitted to participate." The Commission and courts have held that the hearing need not be a trial-type evidentiary

hearing meeting the standards of sections 554 and 556 of the Administrative Procedure Act, 5 U.S.C. 554, 556. The Commission has repeatedly observed that trial-type hearings impose significant burdens and delays, both on applicants and the agency.

7. Based on the information before us, we believe this matter can be adequately resolved on a written record, or a “paper” hearing. The Commission recently supplemented its formal hearing process to expand, in appropriate cases, procedures for hearings based on written submissions and documentary evidence. The presiding officer will issue an initial decision based on the record and pursuant to section 309(k) of the Act, 47 U.S.C. 309(k), and sections 1.267 and 1.274(c) of the Rules, 47 CFR 1.267 and 1.274(c).

8. The initial case order shall inform the parties to file notices of appearance pursuant to section 1.91(c) of the Rules, 47 CFR 1.91(c), and shall place parties on notice that they must be cognizant of Part I of the Rules, 47 CFR part 1, subparts A and B. The initial case order also sets the date for a status conference and the deadline for each party’s submission indicating: (a) whether discovery is expected and a proposed discovery schedule; (b) preliminary motions; (c) proposed case schedule; and whether a protective order is requested. Under section 1.246 of the Rules, 47 CFR 1.246, any party may serve written requests for admission of the genuineness of relevant documents or truth of relevant matters of fact. During the initial status conference the presiding officer will set deadlines for motions, discovery, if applicable, the parties’ affirmative case, responsive case, reply case, and protective order, if requested, pursuant to 47 CFR 1.294, 1.248(b), and 1.371-1.377. In accordance with section 1.248 of the Rules, 47 CFR 1.248, and unless the parties agree otherwise, an official transcript of all case conferences will be made. The Commission has also amended section 1.351 of the Rules, 47 CFR 1.351, to adopt the evidentiary standard set forth in the formal APA hearing requirements. Oral or documentary evidence may be adduced, but the presiding officer shall exclude irrelevant, immaterial, or unduly repetitious evidence. Persons or entities seeking status as a party in interest in this proceeding must file a petition to intervene in accordance with 47 CFR 1.223(a). Anyone else

seeking to participate in the hearing as a party may file a petition for leave to intervene in accordance with 47 CFR 1.223(b).

9. *Accordingly, it is ordered*, pursuant to sections 309(e) and 309(k) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and 309(k), and pursuant to authority delegated under section 0.284 of the Commission's Rules, 47 CFR 0.284, that the captioned application *is designated for a hearing* in a consolidated proceeding before the FCC Administrative Law Judge, at a time and place to be specified in a subsequent order, upon the following issues: (a) To determine, with respect to station WJEH(AM), Gallipolis, Ohio, whether, during the preceding license term, (i) the Station has served the public interest, convenience, and necessity, (ii) there have been any serious violations by the licensee of the Communications Act of 1934, as amended, or the rules and regulations of the Commission, and (iii) there have been any other violations of the Communications Act of 1934, as amended, or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse; and; (b) In light of the evidence adduced pursuant to issue (a) above, whether the captioned application for renewal of the license for station WJEH(AM) should be granted on such terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted, or denied due to failure to satisfy the requirements of section 309(k)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 309(k)(1).

10. *It is further ordered* that, pursuant to section 1.221(c) of the Commission's Rules, 47 CFR 1.221(c), in order to avail itself of the opportunity to be heard and the right to present evidence at a hearing in these proceedings, Vandalia Media Partners 2, LLC, in person or by an attorney, *shall file* within 20 days of the release of this Hearing Designation Order and Notice of Opportunity for Hearing, a written appearance stating its intention to appear at the hearing and present evidence on the issues specified above.

11. *It is further ordered*, pursuant to section 1.221(c) of the Commission's Rules, 47 CFR 1.221(c), that if Vandalia Media Partners 2, LLC fails to file a written appearance within the

time specified above, or has not filed prior to the expiration of that time a petition to dismiss without prejudice, or a petition to accept, for good cause shown, such written appearance beyond expiration of said 20 days, the right to a hearing shall be deemed waived. Where a hearing is waived, the Administrative Law Judge shall issue an order terminating the hearing proceeding and certifying the case to the Commission.

12. *It is further ordered* that the Chief, Enforcement Bureau, is made a party to this proceeding without the need to file a written appearance.

13. *It is further ordered* that, in accordance with section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), and section 1.254 of the Commission's Rules, 47 CFR 1.254, the burden of proceeding with the introduction of evidence and the burden of proof with respect to the issues at paragraph 28 (a)-(b) of the Hearing Designation Order and Notice of Opportunity for Hearing *shall be* upon Vandalia Media Partners 2, LLC.

14. *It is further ordered* that a copy of each document filed in this proceeding subsequent to the date of adoption of this Hearing Designation Order and Notice of Opportunity for Hearing *shall be served* on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations & Hearings Division of the Enforcement Bureau at (202) 418-1420. Such service copy *shall be addressed* to the named counsel of record, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

15. *It is further ordered* that the parties to the captioned application shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. 311(a)(2) and section 73.3594 of the Commission's Rules, 47 CFR 73.3594, *give notice* of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the satisfaction of such requirements as mandated by section 73.3594 of the Commission's Rules, 47 CFR 73.3594.

16. *It is further ordered* that copies of this Hearing Designation Order and Notice of Opportunity for Hearing shall be sent via Certified Mail, Return Receipt Requested, and by regular first-class mail to Vandalia Media Partners 2, LLC, Thomas L. Susman, 1210 Kanawha Blvd. East, Charleston, WV 25301 and Aaron P. Shainis, Esq., 1850 M St. NW Ste. 240, Washington, DC 20036.

17. *It is further ordered* that the Secretary of the Commission shall cause to have this Hearing Designation Order and Notice of Opportunity for Hearing or a summary thereof published in the Federal Register.

Federal Communications Commission.

**Thomas Horan,**

*Chief of Staff, Media Bureau.*

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